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Popular and Legal Views of Traffic Pooling

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POPULAR AND LEGAL VIEWS

OF

TRAFFIC POOLING.

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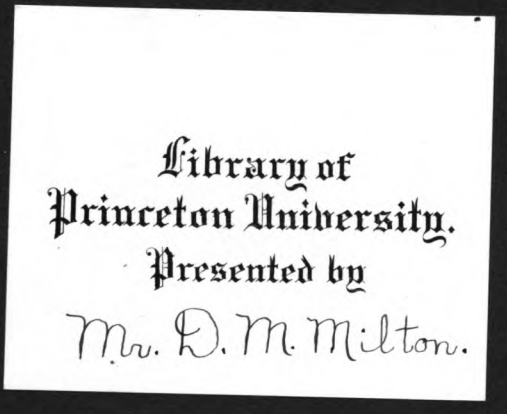

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TRAFFIC POOLING.

Perhaps nothing in respect to the relations between the railroad companies and the public attracts more attention at the present time than the arrangements to which the name of pooling is popularly given. In railroad circles these arrangements are looked upon as necessary to prevent all railroad property becoming absolutely worthless to the stockholders, as a very large part of it is now; and those managers who are hoping to earn dividends are therefore laboring earnestly to make these arrangements effectual. On the other hand, an impression is largely prevalent that pooling contracts are contrivances whereby inequality and excess in rates can be maintained, and a monopoly injurious to the public interest established; and they are by many persons condemned as being unquestionably wrong if not absolutely illegal. As the relations between the public and the railroads are so necessary, so constant and so extensive as to make harmony between them in all that relates to railroad service of very high importance, it seems desirable to give some attention to these arrangements—their nature, their purpose and their legality—and to bring together some considerations bearing upon these points respectively, with a view to giving in brief space the means of forming some opinion in respect to them. Space will not admit of this being done with any completeness, but perhaps the salient points may be presented. What is said will refer especially to pooling in freight traffic, but in principle it will apply to passenger traffic also.

WHAT THEY ARE.

The pooling arrangements between railroads in this country have not all been on the same plan, but it is probably not important now to take notice of any attempts in that direction which have been made and then abandoned. The suggestion of pooling, though likely, perhaps, to occur anywhere, comes to us from England, where pooling contracts in the railroad business and others of a semi-public nature have been held not to be illegal, both when they

were made on the basis of an equal division of profits (1) and where the basis was a division of business between the contracting parties. (2). In this country the method of pooling seems to be for the several contracting parties to create some common authority upon which will be conferred the power to establish and change rates for the transportation of property within a certain territory or over a certain line, and also to apportion the business between them. The apportionment will be made upon a consideration of what the companies severally would be likely to obtain under the operation of free competition, and it will be changed from time to time if found to be relatively unjust. The feature of arbitration upon controversies arising between the contracting parties will also be prominent in the arrangement. The contract will be made for a definite term of years, with liberty to dissatisfied parties to withdraw upon reasonable notice, and it will be likely to provide that a commission acting for all shall give direction to shipments when this shall be necessary to give each road its allotted share. But as shippers will have a legal right to have their property transported by a line of their own selection, it may well happen that some roads will carry more and some less than their proportion, and provision will therefore be necessary for a periodical adjustment of balances, and for the payment of moneys from one to another as may be needful, upon such allowance for the business done above the allotted share as shall be fixed upon as just. Perhaps clauses will be inserted in the contract which will have for their purpose to make it for the interest of shippers to send forward their property according to the directions of the commission, but compulsory power in this direction must practically be very limited.

THEIR PURPOSE.

The avowed purpose in pooling is to avoid ruinous competition between the several roads represented, and the unjust discrimination between shippers which is found invariably to attend such competition. The desirability of the last mentioned object is agreed to on all hands. The existence of unjust discriminations is one of the chief complaints made by the public against railroad management, and one of the reasons always assigned for interference by law. It may therefore be taken as agreed that, so far as pooling arrangements have the correction of this evil in view, the purpose is commendable.

(1) Hare vs. Railway Co., 2 Johnson & Hemming's Reports, 80.
(2) Collins vs. Locke, 4 Appeal Cases, 674.

But the primary object unquestionably is self-protection against ruinous competition; and it is not to be expected that as to this the public opinion of the country will be prepared to give spontaneous approval. A pooling arrangement is a combination; and all combinations in a business which so intimately concerns the public look like attempts to establish a monopoly, and may sometimes result in establishing one. To monopoly the public is instinctively hostile, because it takes from them the power of dealing on equal terms with those who control it. Besides, a combination that has for its object to check competition, seems to stand in hostility to the industrial maxim that "competition is the life of trade," a maxim which from time immemorial has been generally prevalent, and is commonly supposed to be one admitting of no question and of universal application. The advantages of unrestricted competition are apparent to the public in industrial life all about us; and while in some kinds of business this is sharp, yet selfishness is generally sufficiently active and sufficiently intelligent to prevent its becoming ruinous. It does not detract from the worth or soundness of the maxim that under the operation of unrestricted competition individual disasters must occur; for when this happens it is very likely to be found either that the parties did not understand the business they were engaged in, or managed badly, or lacked the necessary capital, or in some other particulars were inadequately equipped. Against ruin from these causes protection is impossible. The maxim referred to is so commonly accepted that courts have made it a basis for important judgments; and it is not to be wondered at, therefore, that the question should be made whether it is competent to erect barriers to free competition in a business so important to the public as that which is carried on by the railroads.

The answer made on behalf of the railroad companies is that the business and the necessary preparation for carrying it on make their case so peculiar that competition necessarily affects them in a way different to that in which it affects others; so different that it may be destructive to them where to others it would only be stimulating and wholesome. Some of the reasons which will be assigned for this will be recognized by every one as possessing force. In most kinds of business, competition easily and naturally regulates the extent to which a business shall be carried on; persons engage in it only when they think they see a reasonable opening for profit; they push the business with men and money when the promise of success

is such as to warrant it, and when it is not, operations are reduced; some, perhaps, go out of the business, and capital seeks other investments. The merchant, when competition becomes too severe for him, may turn farmer or manufacturer; the manufacturer may change his line of production or temporarily reduce it; and these changes it is generally possible to make without serious loss. Very seldom the whole plant for one business will be useless for any other. The general results of competition will therefore be such that, while the public will have the benefit of low prices, a general equilibrium of demand and supply will be maintained without bringing disaster to individuals.

Much of this is as different as possible in the railroad world. The investment for the purposes of a railroad is permanent, and is available to a single purpose only. If it cannot be made available for the transportation of persons and property it is a wasted investment; as much so as if it had been cast into the sea. But when the construction of railroads is entirely unrestricted, there is always a tendency to build more than are needed, and more than can be made profitable. The reasons for this are numerous. Railroads are a great local convenience; every village wants one or more; and it is easy for plausible men, who see individual profit in their construction, to convince the local community that a road which will accommodate their local needs must be profitable. If the law permits a levy of municipal taxes in aid of the local scheme, it will not be difficult to obtain a popular vote in its favor; if taxation for the purpose is not allowed, the popular credulity will be appealed to with assurance of great increase in property from the building of a road which will give easy access to market; and men will give freely in the expectation that in one way or another they will receive large returns. Roads have thus in many cases been constructed at general expense in which a capitalist for the purpose of investment would put nothing. But roads are also built under an expectation, on the part of those who originate and push them, that in some way the originators will be enabled to make them available for their individual benefit, regardless of their real value; sometimes through holding the control and managing them; sometimes by forcing the owners of other roads to which they would be rivals to buy them. For these and other reasons roads are brought into existence for which there is no adequate demand, and whatever people have been

induced to put in them is a dead loss. In some other countries the government endeavors to provide against such losses by refusing charters for roads which seem not to be called for by any public need, or which can only be profitable by rendering worthless some existing line; but the policy in this country has always been to leave railroad building practically unrestricted, and the best and most useful line, though it may fully accommodate the public need, is never secure against being ruined by the construction of a rival line which scheming and unscrupulous persons induce the credulous to furnish the capital for.

But such roads when constructed remain, and will be operated so long as the cost of operating can be paid from the earnings. They may pass from the hands of stockholders into those of bondholders, and though even then pay nothing upon the bonds they will continue to be operated. This is the condition of very much of the railroad property of the country to-day; hundreds of millions of the capital invested in it is absolutely sunk, but the plant remains and the road will be operated, though those whose property it represents neither receive dividends upon their investment nor have any reasonable prospect that they ever will. If then a company to which the bankrupt company is a rival shall not only endeavor to pay operating expenses and the interest on its indebtedness, but also to pay dividends to stockholders, it must do so in competition with one whose managers expect to pay no dividends, and no interest expect as perhaps they may find it necessary to do so in order to retain control. Such a state of things can exist in no business from which a transfer of capital is possible; and the competition it creates instead of being "the life of trade," is as to this business destructive of the capital invested in it. It becomes a matter of necessity, then, that the competition which is so likely to be destructive should be restrained within limits which will admit of reasonable and reliable prosperity; and some common arrangement between the roads seems to be the only means yet found by which this can be accomplished. The common arrangement agreed upon for the purpose is that of pooling; it has grown out of the necessities of the case; and, while it is necessary to the railroad companies, it is unjust to no one. This, briefly and imperfectly stated, is the railroad view of the necessity and propriety of pooling compacts.

It is proper to add to this statement that the want of harmony between the railroad companies which has its most noticeable mani-

festations in wars of rates causes injury and inconvenience to the public in ways which railroad managers in public discussions are not likely to dwell upon or make prominent. In other kinds of business when competition is unrestricted dealers find it to their interest to study the convenience of the public, and to invite custom by being as accommodating as possible; and what they do in this regard is no wrong or injury or inconvenience to their rivals, but only incites them to be equally accommodating. But railroad companies cannot be accommodating to the full extent of the public needs unless they are accommodating to each other; for a very large proportion of those who have occasion to use their facilities, desire to pass, in person or with their property, from one road to another, and wish to do this without unnecessary cost of transfer or unnecessary delay. But hostile competition, while it may incite the roads to run a race in popularity, also leads them to make many arrangements which are inconsistent with the full accommodation to the public which might be and ought to be given. Rival lines have their station buildings on different sides of a town when they might with the same convenience to themselves and with greater convenience to the public be together; they have different station houses at crossings when one would answer for all; their time tables are so arranged as to cause inconvenience whenever a passenger leaves their line to pass upon another which is not working in harmony with them, and they establish soliciting agencies which are only made important by the rivalry. In all these things the several companies think they advance their individual interest in the competition; but in doing so they not only make the service they render to the public less valuable but also more expensive. Some of the evils of unrestricted competition have been generally recognized by those who have been most earnest in demanding congressional legislation, and it has been one feature of the bills introduced that restraints, more or less considerable, should be imposed.

It is also proper to add that, whether the railroad companies anticipate it or not, no pooling arrangement, unless the aid of the law can be had for its enforcement, can possibly put an end to competition between them. The arrangement may regulate competition but cannot stop it. The apportionment of business, as has been said, will be made on a calculation of what the respective roads would be likely to obtain under free competition; and every company, in view of the periodical readjustment of percentages, will be

interested in showing that its facilities and its management naturally bring to it a larger proportion than it now receives; and the rivalry for public favor will go on as before, though it may be expected that some of the features of rivalry which, when it is hostile, are peculiarly injurious to the public, will be eliminated by the agreement to work in harmony. Moreover the several soliciting agents of the roads will have a personal interest in showing their value to their employers by presenting good results from their service in the employment; the permanent value of each road, as well as the market value of its stock, will depend largely on the shares awarded to it in the periodical readjustments; all the prejudices which concur in bringing about first secret and then public departures from common agreements will only be repressed by the pooling, not removed; and not only will competition continue notwithstanding the common agreement, but it will by force of the circumstances be so far active and efficient in keeping rates within bounds that one would hazard nothing in saying that, within the territory whose business is naturally affected by the competition of the trunk lines, the period when rates can be controlled by combinations and kept at figures limited only by the discretion or the greed of the managers, is gone forever.

THE LEGALITY OF RAILROAD POOLS.

But it is said that all contracts which have for their object to restrain competition are illegal at the common law, because they are in conflict with a general principle of public policy. The term illegal is somewhat ambiguous. A contract may be illegal in the sense that it is forbidden by a law which imposes some penalty for entering into it, or it may be illegal because, though not forbidden, it is considered to be of an injurious and demoralizing tendency, and therefore the law will not favor it, but will refuse to lend its aid in enforcement. If a contract is only illegal in this last sense, parties are at perfect liberty to enter into it if they please, but performance of its conditions must be entirely voluntary. It is under this head that pooling contracts are supposed to come.

It is a familiar principle in the law that contracts in general restraint of trade are void. Therefore if a man contracts with his rival in business that for any agreed consideration he will no longer pursue his customary calling within the state in which he resides, the promise is one he may keep at pleasure or break with impunity. The reasons are that such a contract if enforced would deprive the

public of the benefits of competition, and at the same time impose restraints going far beyond what would be needful for protection to the party bargaining for them. But it was always agreed that competition, in so far as it operated injuriously to individuals might with entire competency be limited by contract; and in a great variety of cases it has been held that a man may lawfully bargain to put an end to an injurious competition in his business in the locality where he carries it on, or that he may bargain to prevent the establishment in that locality of a competing business which he fears may be injurious. It is only when he exacts terms that go beyond giving him protection that the law holds his contract to be unreasonable, injurious to the public, and therefore illegal. The reader unfamiliar with the law reports will find many of the cases referred to in the note; and it will appear on an examination that in all of them the legality of bargaining to limit competition, when it is kept within the bounds of reasonable protection, is either assumed or expressly affirmed. (1)

The principle upon which these cases are decided is that by which pooling arrangements, so far as concerns their legality, must stand or fall. If they are illegal, it is because they establish unreasonable restraints upon competition in business; if they can be supported in law, it must be upon the ground that they only give to the parties concerned that reasonable protection against competition which is needful to their prosperity. Having this in mind it may be useful to refer to such judicial decisions as seem to bear most directly upon this peculiar class of contracts.

It has already been said that pooling arrangements have been sustained in Great Britain. One of the cases passed upon was a pooling arrangement between stevedores; another was between competing railroads; and in neither case was it deemed an objection that the effect of the contract was to limit competition, or that this was to be accomplished by a combination. In the railroad case (2) Vice Chancellor W. Page Wood said among other things: "It is a mistaken notion that the public is benefited by putting two rail-

(1) The following cases are selected from the great number which recognize the principle, because the republication in the volumes here given is accompanied by valuable notes and references: Mitchel vs. Reynolds, Smith's Leading Cases, 508; Perkins vs. Lyman, 6 American Decisions 158; Pierce vs. Fuller, 5 American Decisions 102; Bowser vs. Bliss, 43 American Decisions, 93; Grundy vs. Edwards, 23 American Decisions 409; Morgan vs. Perhamus, 38 American Reports 607; Pike vs. Thomas, 7 American Decisions, 741; Drill Company vs. Morse, 4 American Reports 513; Hoyt vs. Holly, 12 American Reports, 390; Hubbard vs. Miller, 15 American Reports 153; Cook vs. Johnson, 36 American Reports 64.

(2) Hare vs. Railway Co. 2 Johnson & Hemming's Reports 80.

road companies against each other until one is ruined; the result being at last to raise the fares to the highest possible standard."

Before either of these cases was decided it had been held by the supreme court of New York [in 1847] that a contract between the proprietors of canal boats for fixing rates and for a division of net earnings was void, though the object was expressed to be "to establish and maintain fair and uniform rates of freight, and to equalize the business of forwarding on the Erie and Oswego canals among themselves, and to avoid all unnecessary expenses in doing the same." The argument of the court is brief, and is summed up in two short sentences: "The object of this combination was obviously to destroy competition between the several lines in the business engaged in. It was a conspiracy, between the individuals contracting, to prevent a free competition among themselves, in the business of transporting merchandise, property and passengers upon the public canals." "It is a familiar maxim that competition is the life of trade. It follows that whatever destroys or even relaxes competition in trade is injurious if not fatal to it." (1) Thus it will be seen that by giving a bad name to the arrangement, and quoting the old maxim, the court was supposed to have sufficiently reasoned the case out, and the judgment followed as of course. A similar agreement was shortly afterwards condemned by the same court, in the case of Stanton against Allen, (2) as being designed to exempt the standard of freights, etc., "from the wholesome influence of rivalry and competition."

These cases have not passed entirely without criticism in this country. They were cited to the supreme court of Wisconsin not long after they were made, and were there dissented from in very vigorous terms. (3) Referring to the maxim that competition is the life of trade, Judge Howe, speaking for the court, said that it "is one of the least reliable of the host that may be picked up in every market place. It is in fact the shibboleth of mere gambling speculation; and is hardly entitled to take rank as an axiom in the jurisprudence of this country. I believe universal observation will attest that for the last quarter of a century competition in the trade has caused more individual distress, if not more public injury, than the want of competition. Indeed by reducing prices below or raising them above values—as the nature of the trade prompted—competi-

(1) Hooker vs. Vandewater 4 Denio's Reports 349.
(2) 5 Denio's Reports 434.
(3) In Kellogg vs. Larkin 3 Chandler's Reports 133.

tion has done more to monopolize trade, or to secure exclusive advantages in it, than has been done by contract. Rivalry in trade will destroy itself, and rival tradesmen, seeking to remove each other, rarely resort to contract, unless they find it the cheapest mode of putting an end to the strife. And it seems to me not a little remarkable that in the case of Stanton vs. Allen it should have been urged against the agreement that its object was to exempt the standard of freights, etc., 'from the wholesome influence of rivalry and competition.' For it is very certain that because of that very purpose—because they did tend to protect the party against the influence of rivalry and competition—courts of law have upheld like agreements in partial restraint of trade, ever since the case of Mitchell vs. Reynolds." (1)

But there are several other American cases which, in their general reasoning, must be conceded to give some support to the cases decided in New York. Among these are the cases in which combinations between coal companies to control the production of coal and its price in the market have been held illegal. (2) An agreement between dealers in a certain line of goods not to put any upon the market for three months has also been held to be illegal. (3) So has a combination which had for it purpose to effect a corner in the wheat market. (4) So has a combination between parties furnishing recruits in time of war, whereby they agree not to furnish them for less than a fixed price. (5) So have agreements not to compete in bids for public contracts. (6) So have combinations to keep up the price of Salt. (7) And combinations to put up or to put down the wages of laborers, whether entered into by laborers or by employers, must in general depend for their observance upon the good faith of those who make them. (8) It would be easy to show that many of these cases have no important bearing upon the question of the legality of railroad pools, but they are likely to be brought under consideration in any legal controversy on that subject, and the propriety of their being here referred to will therefore be apparent.

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(1) This is the leading case on contracts in restraint of trade, and was decided in 1711: 1 P. Williams' Reports 181. 1 Smith's Leading Cases, 508.

(2) Morris Run Coal Co. vs. Barclay Coal Co. 68 Penn. State Reports 173; Arnot vs. Coal Co. 68 New York Reports 558.

(3) India Association vs. Kock, 14 Louisiana Reports 168.

(4) Raymond vs. Leavitt 46 Michigan Reports 447.

(5) Marsh vs. Russell 66 New York Reports 288.

(6) Atcheson vs. Mallon 43 New York Reports 147. People vs. Stephens 71 New York Reports 527. Ray vs. Mackin 100 Illinois Reports 246. Swan vs. Chorpenning 20 California Reports 182.

(7) Salt Co. vs. Guthrie, 35 Ohio State Reports 666.

(8) Journeymen Taylors' Case, 8 Modern Reports 10; Commonwealth vs. Hunt, 4 Metcalf's Reports 111; The Queen vs. Rowlands, 17 Queen's Bench Reports 671; Hilton vs. Eckersly, 6 Ellis and Blackburn's Reports 47.

In the light of the judicial decisions as they now stand in this country, it cannot safely be affirmed that the law will lend its aid to enforce the pooling contracts between railroads. It seems on the other hand more than probable that the courts will declare that such contracts are not sanctioned by the law. This is said irrespective of any opinion upon the question whether, as an original proposition, such ought to be the result. The early decisions in New York, which have given a certain tendency to subsequent judicial thought and action, were made with little or no investigation of the subject involved, and without any attempt whatever to show that the principle by which the legality of arrangements to avoid injurious competition must be tested had been overlooked or disregard d in the contracts before the court. But they have stood without much question to the present day; in their conclusions they fall in with prevailing notions of what is public policy on the subject, there is, *a priori*, a strong presumption, legal as well as popular, that they are correct; and they are likely for all these reasons, whether sound or not, to stand as precedents which courts will expect to follow. If that shall be the result of any litigation, or if the companies themselves shall look upon such a result as possible, and therefore decline litigation, the companies entering into pools must rely for the enforcement of their contracts upon the honor of the corporate officers and agents, and upon the methods that may be devised for making it to the interest of the several contracting parties to observe their agreements.

SANCTIONS FOR POOLING CONTRACTS.

Penalties to be imposed by the association will be out of the question. They will not be paid voluntarily by parties who will not voluntarily observe their agreements, and they cannot be collected by law. No doubt it might be made part of the pooling arrangement that a fund should be provided by proportionate contributions, and that from the sum paid in by any member a penalty assessed against it should be paid; but it would be easy for such member, if dissatisfied, to enjoin the payment, or, in case of its failure to take steps for that purpose, for any of its stockholders to do so. Penalties, therefore, cannot constitute a reliance.

The principal danger to be guarded against is the cutting of rates. In the unregulated and unreasoning strife between railroad companies this cutting is not only carried on to an extent that is ruinous to the companies themselves, but it becomes a disturbing factor in

all commerce; and it is perfectly correct for the railroad companies to say, as they do when defending pooling, that unjust discriminations are a necessary result. The sort of competition which is "the life of trade" in a war of rates, incites every agent to make secretly and by every form of indirection such terms as will secure the business; it is inevitable that these shall be without uniformity, and that those who push hardest and bargain most—which will generally be the large shippers—will be most favored. Low rates, when they can be depended upon for any considerable time, increase the prices of grain and other market commodities in the hands of producers; but they affect prices little if at all when it is uncertain from day to day and from hour to hour what they are to be, and consequently such benefits as come from the hostile cutting of rates are reaped principally by speculators and other large shippers. It is doubtful if the shipping interest ever receives benefits equivalent to the losses which the railroad interest suffers in a war of rates, and the benefits to the general public will seldom equal the incidental injuries. Nothing therefore can be plainer than the desirability that reasonable rates should be maintained with general uniformity, so that they may be calculated upon in the making of contracts and purchases, and so that small shippers as well as large, the man who merely sends his household goods as well as the speculator in grain and provisions, may have the benefit of them.

So far as the steadiness in rates tends to the benefit of the railroads, it is also particularly desirable for a reason not often mentioned. It is a great misfortune to the country that so many of its roads pay no dividends. Though worthless to the stockholders such roads have in the stock market a speculative value, and in the hands of speculating men the stocks become mere implements of gambling, and the roads are managed with a purpose alternately to put up and put down the quotations on the stock board, that the managers may make profit from the sales and purchases. It is beyond doubt that larger fortunes have been made in the manipulation of some worthless roads with a view to deceptive appearances for stock jobbing purposes than would have been derived from dividends equal to the current rate of interest. This is an evil, not solely because of its fostering the prevailing tendency to demoralizing and ruinous speculation, but also for the further reason that it increases and strengthens among the people at large a widespread prejudice against railroad managers as men who contrive to accumulate great fortunes at

the public cost. Under the influence of this prejudice it may well happen that the charges a railroad makes for transportation, though barely sufficient to cover all the items of expense, will be thought exorbitant by the community, who see the members of the managing board acquiring wealth through the ownership and management of the stock. Nor are the community to be blamed for this, for they have a right to assume that all the profits made by managers are derived from the earnings of the roads. Thus non-paying roads not only foster speculative gambling, which is one of the most demoralizing of existing evils, but they also tend to excite in the community a feeling against railroad managers and railroad property, which gradually extends to embrace all forms of aggregate and especially of corporate wealth; and this feeling in any time of unusual excitement or distress is liable to break out into uncontrollable fury, and to seek gratification in destruction. All property owners, and all law-abiding and patriotic people, are therefore directly concerned in removing, so far as may be in their power, the causes which are likely to originate or to foster such dangerous tendences.

But without the aid of the law to enforce pooling arrangements, it is not as yet apparent that any scheme can be devised whereby the cutting of rates can be effectually prevented. Entering into a pooling arrangement is an admission that unrestricted competition is destructive; but when the pooling agreement is departed from and one road begins to cut rates, the others, in self protection must be suffered to cut also. This is not enforcing the pooling agreement; it is destroying it. Possibly if the combination were sufficiently extensive, a refractory road might be temporarily crippled, and thus brought to terms by the others refusing to exchange business with it; but their power in this regard is much restricted by the law prescribing the duties of common carriers. Besides, a road boycotted by others because it is cutting under their rates will be likely to have the public sympathy as a road suffering persecution in the public interest; and this sympathy will give it valuable assistance. It may well happen, therefore, that an attempt at boycotting will prove a mortifying failure. It is certain that it could not be relied upon as a general remedy for the breach of a pooling agreement.

But these common arrangements, though unprotected by the law, have, nevertheless, done very much to save railroad property from needless injury. They bring into existence a commission or other common authority in which all the parties have confidence, which is

charged with the duty to keep the peace between the roads, to hear mutual complaints, to investigate charges of the breach of their common agreements, to give redress, so far as advisory power can do so, and to concentrate public opinion in railroad circles upon any member failing to observe its covenants, and make it feel the public censure. It is natural to expect that the benefits will increase as the managers become accustomed within the agreed limits to submit to the direction and control of the common authority. But a pooling arrangement is only a treaty of peace; as a combination it has little coherence; and the passions of a single railroad manager, the failure of a single agent to keep faith, or the nervous eagerness to keep rolling stock employed when the offerings of property for transportation are light, may at any time break it down. No treaty is law except so long as the contracting parties can see that it is probably for their interest to observe it, and the suspected breach of good faith in a treaty is commonly sufficient to breed an actual breach.

THE FUTURE.

That the railroad problem, so far as it is involved in wars of rates between the roads, cannot as yet be considered solved is very manifest; the railroad companies have only made an effort in the direction of solving it. Common agreements, if they had the encouragement and protection of the law, would very probably supply it; but for that purpose legislation would seem to be essential. But legislation would be mischievous rather than beneficial, unless it was conceived in the spirit of statesmen, and was made to express neither special favor for, nor special hostility to, the interest it would regulate. The railroad interest of this country represents an enormous aggregate of wealth, and an increasing aggregate of corporate poverty; and it has immense capabilities for good or evil to the people. It cannot possibly be for the interest of any country that so large a proportion of the invested capital should be wasted or unremunerative, especially when in that condition its necessary tendency is to favor dishonest management and gambling speculation. On the other hand, it is for the interest of the country that the public shall receive, in as large a degree as shall be possible, the benefits which were calculated upon in providing by law for the building of the roads. Regulating legislation should, therefore, be conceived neither exclusively in the interest of railroad companies nor in the spirit of hostility to them.

What the country needs is that they shall be made useful; not that they shall be crippled or bankrupted, or made stock-jobbing conveniences for their managers. And no doubt when the whole subject is carefully examined and wisely considered, it will be found that the true interests of the owners of railroad property may be made to harmonize perfectly with the true interests of the public, and that it will be as wise for the state to encourage and protect whatever in corporate arrangements is of beneficial tendency as it will to suppress what is mischievous. T. M. Cooley.